84-886

No. 84-886

SUPREME COURT, U.S.
FILED
JAN 4 1985
ALEXANDER L. STEVAS
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In The

Supreme Court of the United States

OCTOBER TERM, 1984

JAMES SUNDSTROM SULLIVAN and
HELEN DAWSON SULLIVAN,
Petitioners,

-vs-

THE FIRST PEOPLES BANK OF NEW JERSEY,
THE MARY V. SULLIVAN TRUST FUND,
DONALD R. SUNDSTROM, Trustee,
HARRY F. SUNDSTROM, Deceased, Trustee,
JOHN J. MASTER, JR., ESQ., (A New Jersey Attorney
at Law), JANET STUART and SURTEES L.
MacKERCHAR, (Trust Officers of the First
Peoples Bank of New Jersey),
Respondents.

On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI FOR ALL RESPONDENTS OTHER THAN THOMAS E. SUNDSTROM

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P.O. Box 363 Area Code 609
Cranbury, N.J. 08512 443-4202

TABLE OF CONTENTS

PAGE

Table of Contents i

Table of Authorities ii

Preliminary Statement 1

Counter-Statement Of The Case 2

Matters and Grounds Why The Cause Should Not Be Reviewed By This Court

POINT I

AN ORDER ENFORCING SETTLEMENT, INCLUDING A DISMISSAL OF THIS ACTION, HAS BEEN ENTERED IN AND AFFIRMED BY THE STATE COURTS 7

POINT II

THERE ARE NO SPECIAL AND IMPORTANT REASONS FOR THE COURT TO GRANT A WRIT OF CERTIORARI 8

POINT III

THE PETITIONERS HAVE PRESENTED QUESTIONS NOT PROPERLY RAISED BEFORE THE THIRD CIRCUIT COURT OF APPEALS IN THIS MATTER 13

POINT IV

THE PETITIONERS HAVE NO STANDING TO RAISE QUESTIONS CONCERNING THE DISMISSAL OF THE CROSSCLAIM OF THOMAS E. SUNDSTROM 14

POINT V

WITH RESPECT TO QUESTION THREE (3), THE PETITIONERS HAVE NOT TIMELY PETITIONED FOR CERTIORARI RELATIVE TO THE CHALLENGED ORDER 15

Conclusion 16

TABLE OF AUTHORITIES

PAGE

CASES CITED:

Bershad v. McDonough, 469 F.2d 1333, 1336 (7th Cir. 1972) 11

Glick v. White Motor Company, 458 F.2d 1287 (3rd Cir. 1972) 11,12

Lathrop v. Oklahoma City Housing Authority, 438 F.2d 914 (10th Cir. 1971), cert. den. 404 U.S. 840 (1971) 11

Long v. Emery, 383 F.2d 392 (10th Cir. 1967) 11

Lord v. Helmandollar, 348 F.2d 780 (D.C. Cir. 1965) cert. den. 383 U.S. 928 (1966) 11

Mashak v. Hacker, 297 F.2d 495 (7th Cir. 1961) 11

Spray-Rite Service Corp. v. Monsanto Co., 684 F.2d 1226 (7th Cir. 1982) 12

Trujillo v. Longhorn Mfg. Co., Inc., 694 F.2d 221 (10th Cir. 1982) 12

United States v. Stuart, 392 F.2d 60, 62 (3rd Cir. 1968) 11

Warner v. City of Bay St. Louis, 526 F.2d 1211 (5th Cir. 1976) 12

Weedon v. Gaden, 419 F.2d 303 (D.C. Cir. 1969) 10

RULES CITED:

Local Rule 12(c) 13

Rule 17 1,8

Rule 21.1(j) 1

Rule 21.5 16

Rule 22.1 1

Rule 34.2 1

Rule 73(a) 11

AUTHORITIES

PAGE

RULES CITED CONT'D:

F.R.A.P. 4(a) 9
F.R.C.P. 60(a) ..... 8, passim
F.R.C.P. 77(d) 8,10,12

UNITED STATES CONSTITUTIONS CITED:

28 U.S.C. 2101 (c) 15

OTHER AUTHORITIES CITED:

Moore, Federal Practice, Vol. 6A, 60.05-60.08 (1973) 12

PRELIMINARY STATEMENT

The Petitioners have filed a Petition for Certiorari in clear violation of the requirements of *Rule 21.1(j)* that same contain a direct and concise argument amplifying the reasons relied on for the allowance of the writ pursuant to the provisions of *Rule 17*. Instead, the Petitioners have made a rambling, inaccurate and misleading presentation of both the underlying facts and also the procedural history of the within matter which is a complete distortion of the events which underlie the present controversy.

The said Petition is also, to a great degree, a brief on the merits prior to the Court's granting the Petition for Writ of Certiorari. In order to comply with the requirements of *Rule 22.1*, the Respondents (except for Thomas E. Sundstrom) are jointly filing the within Brief in opposition to the Petition For Certiorari and limiting their arguments to the disclosure of those matters and grounds why the cause should not be reviewed by the Court pursuant to the provisions of *Rule 17*. In doing so, however, the Respondents do not in any way concede the merits advanced by the Petitioners in the guise of reasons relied on for the allowance of the Writ. The Respondents are also compelled to set forth a true statement of the case in order to correct the inaccuracies and omissions contained in the Statement of Facts provided by the Petitioners, as would be required in a brief on the merits pursuant to *Rule 34.2*.

COUNTER-STATEMENT OF THE CASE

On or about August 29, 1978, the Probate Division of the Cape May County Court entered an Order pursuant to which a conveyance of a certain real property asset of a trust was to be made to the Petitioner James Sundstrom Sullivan ("Sullivan") for a sum certain and specifically conditional upon (1) his obtaining financing therefor by September 25, 1978 and (2) settlement taking place by October 25, 1978. (152a). The Order specifically provided that in the event that Sullivan was unable to produce a firm commitment for the full purchase price by the said date, the other trustees were to proceed to liquidate the said property in a stipulated manner. Sullivan was, in fact, unable to procure the required commitment or make settlement by the dates so fixed and, ultimately, on December 8, 1978, the Court stated that it was once again and **for the last time** granting an extension to Sullivan to make settlement by December 22, by his tender of the full amount of $25,000.00 in cash and in exchange for a deed.

On December 11, 1978, Sullivan wrote to his three brothers, the co-trustees of the estate, and advised them that he had received a title report which, he concluded, established that title to the subject property was not vested in the trust estate but was, in fact, vested either jointly in the trust fund and the Respondent Donald R. Sundstrom ("Donald") or solely in Donald. It should be noted that Sullivan has apparently had both some formal legal training and also extensive past and contemporaneous experience as a **pro se** litigant. In his communications with his brothers, therefore, Sullivan clearly attempted to speak with authority in regard to his legal conclusions and he stated that he did not see how title could pass on December 22, 1978.

On December 12, 1978, Sullivan wrote Donald and advised him that the title report had shown Donald to be the owner of the subject premises. He further stated that he would inform Donald "as to the new settlement date" and indicated his intention to insure the title with another title company which "will not know of the existence of the Mary V. Sullivan Trust Fund".

Shortly thereafter, Sullivan sent to Donald a deed which he had prepared and correspondence which stated that he would not inform the Court of the transaction until after same had taken place. He fur-

ther stated that he could not obtain a second mortgage on the subject property, until a first mortgage had "gone through", because the prospective first mortgagee wanted a first lien with no other incumbrances.

The aforesaid communications were directed by Sullivan to his brothers without any notice of same being given to the Respondent John J. Markwardt, Esq. ("Markwardt"), who had been representing Donald in connection with the trust proceedings, to the Respondent corporate trustee, The First Peoples Bank of New Jersey ("The Bank"), or to its attorney, the Respondent John J. Master, Jr., Esq. ("Master"), who had been representing the corporate trustee in connection with the trust proceedings.

Fortunately, Donald reported the said communications to his attorney, and thereafter Sullivan confirmed his position regarding settlement with said attorney. On December 22, 1978, for example, Sullivan wrote to Markwardt, and advised that his "second title report" showed conclusively that Donald owned the subject property. Sullivan felt that the original Court Order of settlement would have to be vacated and discussed whether the Motion to so vacate the Order would be brought by Donald or by Sullivan. On December 18, 1978, Sullivan wrote to the Court and advised of his conclusion that the subject property was not a part of the trust estate, and stated that "there is a cloud on the title if the corporate trustee attempts to pass title by virtue of the Mary V. Sullivan Trust instrument". Sullivan also advised the Bank, through Master, of his conclusions and position by letter dated December 27, 1978.

As a result of subsequent investigation, however, it became apparent that the title to the subject property was, in fact, vested in the trust and that Donald had no individual interest in same. Since the previously-fixed time deadlines which had been established by Court Order, as extended, had expired, the parties applied to the Court for directions. By Order dated April 23, 1979, the Court granted to Sullivan a further extension to make settlement by May 18, 1979, upon his specific representation that he still had a mortgage commitment in an amount not less than that previously required by Court Order. Sullivan scheduled the settlement to take place on May 16, 1979 but, at the appointed time and place, neither Sullivan nor the Respondent Thomas E. Sundstrom ("Thomas") appeared; however, by that date, a deed had been executed by the Bank by the Respon-

dent Harry F. Sundstrom ("Harry") and by Donald. Donald, Markwardt, and Master all appeared at the place scheduled for settlement by Sullivan.

On May 21, 1979, the Court ordered that a deed signed by trustees other than Thomas and Sullivan would be valid and sufficient to convey title to the subject property. Both that Order, and previous Orders, were challenged by Sullivan and after a full hearing, the Court ordered, on November 16, 1979, that any deed executed by the Bank would be valid and sufficient to convey title to the subject property. Sullivan applied for a stay of that Order and, on February 6, 1980, that application was denied by the Appellate Division of the Superior Court of New Jersey. Sullivan failed to prosecute his appeal of that Order in the Appellate Division, and his appeal was dismissed for lack of prosecution. (See Pa 20-3). On or about May 29, 1980, the Petitioners filed the within action in the Federal District Court against the Respondents.

The aforesaid statement of the case has been presented in order to evidence the malicious, false and misleading manner in which the Petitioners have prosecuted this action from its very inception. In their Statement of Facts, the Petitioners allege that Donald and Markwardt refused to go to settlement on December 22, 1978. As clearly set forth above, however, it was Sullivan himself who refused to proceed with settlement because he had procured a title report which, he concluded, had shown that title to the subject property was vested in Donald. He then attempted to procure title to the subject property from Donald and without regard for the specific directions of the previously-entered Court Order. He drafted a deed and submitted same to Donald for execution and he proposed to obtain title insurance from a title company not cognizant of the trust fund. Finally, he attempted to accomplish his goals by circumventing the attorney of record for Donald.

It is clear that Sullivan was never ready, willing, or able to engage in a settlement on or before December 22, 1978 and, in fact, had manifested his intention not to participate in settlement by such time. Thus, his statement to this Court that certain of the Respondents refused to go to settlement on December 22, 1978 is an outrageous falsehood which is clearly designed to mislead the Court in its review of the Petition.

On March 16, 1981, the United States District Court dismissed the Petitioners' Complaint with prejudice. (Pa 25). The Petitioners' appeal of this Order was dismissed due to the fact that there remained undisposed in the District Court certain counterclaims and a crossclaim filed by various Respondents. (Pa 26). Upon the matter being remanded to the District Court, two pre-trial conferences were held and, upon agreement of the parties, an Order was submitted which provided for the dismissal of the outstanding counterclaims and crossclaim. The Petitioners thereafter advised the Court that they had no objection to the form and content of this Order and acknowledged their understanding that the matter would thereby be concluded on the trial level. In their Statement of the Facts, however, the Petitioners claim that they objected to this form of Order because it did not include the crossclaim of Thomas.

This statement is also completely and totally false. On March 17, 1983, Sullivan wrote to the Federal Magistrate and stated that "I see no objection from the Plaintiff's and as to the form and content of the Order submitted by Mr. Markwardt". In fact, a copy of this letter was annexed by the Petitioners as Exhibit PA 277 in the Appendix which they filed with the United States Court of Appeals for the Third Circuit.

Shortly after stating their lack of objection to the said Order of dismissal and apparently as a result of their becoming disgruntled with certain State Court proceedings, the Petitioners filed a motion in the District Court for reinstatement of their Complaint. The motion was ultimately made returnable on July 8, 1983 and the Petitioners were directed by the Court to promptly determine the disposition of their application. A copy of the Court's Notice was annexed as Exhibit PA 318 in the Appendix filed with the Third Circuit. On July 13, 1983, the Court entered an Order denying the plaintiffs' motion (Pa 29) and on July 14, 1983, the Court entered the Order dismissing the outstanding counterclaims and crossclaim, said Order specifically reciting therein that the dismissal of same would terminate the entire action. (Pa 30).

In their Statement of the Facts, the Petitioners assert that in approximately mid-September, 1983, they contacted the Clerk of the Court who informed them "that the file was in Trenton, and was in the dead files there"; however, the Petitioners have already sworn in an affidavit annexed as Exhibit PA 302 in the Appendix filed with

the Third Circuit that they did not call the Court to ascertain the disposition of their motion until approximately mid-October, 1983. By that time, of course, the Petitioners' right to appeal, if any, had expired on approximately August 13, 1983. Recognizing their dilemma, the Petitioners attempted to renew the previously entered order for the purpose of appealing therefrom, and filed a motion purportedly "to cure defect in service of process" contending therein that the Clerk had failed to serve them with copies of the said Orders. This motion was opposed by the Respondents and, on November 21, 1983, the District Court rejected this patently frivolous argument and entered an Order denying the motion. (Pa 32).

On December 20, 1983, the Petitioners attempted to appeal the Orders dated March 5, 1981, July 13, 1983, and November 21, 1983. On April 19, 1984, the United States Court of Appeals for the Third Circuit entered an Order which limited the appeal to the issues presented in the District Court's Order of November 21, 1983, since the time within which to appeal the previous Orders had long since expired. (Pa 33-36).

By Judgment dated September 4, 1984, the November 21, 1983 Order of the District Court was affirmed. (Pa 44).

MATTERS AND GROUNDS WHY THE CAUSE SHOULD NOT BE REVIEWED BY THIS COURT

POINT I

AN ORDER ENFORCING SETTLEMENT, INCLUDING A DISMISSAL OF THIS ACTION, HAS BEEN ENTERED IN AND AFFIRMED BY THE STATE COURTS.

On or about February 17, 1983, Sullivan entered into a stipulation of settlement which was placed upon the record in the New Jersey Superior Court. Pursuant to the terms of that settlement, Sullivan bargained for and accepted certain consideration from the Respondent Bank including the abandonment of certain claims against Sullivan, the payment of $15,000.00 to his children's trust, the assignment to him of shares of stock, and additional enumerated consideration. In return, Sullivan expressly stipulated that this federal court action would be dismissed with prejudice.

Sullivan's later attempt to repudiate this settlement was rejected by the Superior Court which entered an Order, on May 16, 1983, which enforced the terms of the settlement as if same had been signed by the Petitioners. The Appellate Division of the Superior Court has unanimously affirmed this Order and the New Jersey Supreme Court has declined to review same.

The Petitioners totally failed to disclose the foregoing facts to the District Court, to the Court of Appeals, and to this Court and this stipulation, and the Petitioners concealment thereof, constitute ample grounds why this cause should not be reviewed by this Court.

POINT II

THERE ARE NO SPECIAL AND IMPORTANT REASONS FOR THE COURT TO GRANT A WRIT OF CERTIORARI.

Pursuant to *Rule 17.1*, a review on Writ of Certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. Although neither controlling nor fully measuring the Court's discretion, the character of the reasons which will be considered are set forth in *Rule 17.1(a)*, *(b)*, and *(c)*. The Petition for Certiorari contains no claims whatsoever relating to either a conflict of decisions between and among federal courts of appeals and state courts of last resort. The Petition also fails to claim that the decision of the Third Circuit Court of Appeals involves an important question of Federal Law which has not been, but should be, settled by the Supreme Court or that said decision has decided a federal question in a way in conflict with the applicable decisions of the Supreme Court. It is also abundantly clear that the Third Circuit Court of Appeals has not so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Supreme Court's power of supervision.

In its memorandum opinion of August 24, 1984 (Pa 41), the Third Circuit Court of Appeals ruled that the Petitioners' claim for relief under *F.R.C.P. 60(a)* due to the alleged failure of the District Court Clerk to give Petitioners notice of the entry of prior Orders was specifically precluded by the express provisions of *F.R.C.P. 77(d)*. It is respectfully submitted that this decision by the Third Circuit is in complete accord with the accepted and usual course of judicial proceedings in the application of *F.R.C.P. 77(d)* so as to preclude an untimely appeal by a party even if that party had not received notice of the entry of the disputed Order.

> *F.R.C.P. 77(d)* provides as follows:
> **Notice of Orders or Judgments.** Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in *Rule 5* upon each party who is not in default for failure to appear, and shall make a note in the docket mailing. Such mailing is sufficient notice for all purposes for which notice

> of the entry of an Order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in *Rule 5* for the service of papers. **Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed,** except as permitted in *Rule 4(a)* of the Federal Rules of Appellate Procedure. (Emphasis supplied).

An untimely appeal would not be permitted, in this case, under *F.R.A.P. 4(a)*, which provides that an appeal must be taken within thirty (30) days from the date of the entry of the Order appealed from. Subsection (5) of that Rule permits, upon the showing of excusable neglect for good cause, an application to the District Court for an Order extending time for filing if such Motion is filed not later than thirty (30) days after the expiration of the time otherwise prescribed; i.e., in this case, on or before approximately September 12, 1983. The Rule specifically prohibits any other extensions.

Obviously, by the time the Petitioners found it convenient to check into the disposition of their motion, in excess of three months after its scheduled hearing date, they were already too late to file a motion for extension of time. At the time of the bringing of their motion, they had been directed by the Court to determine the outcome of same. Therefore, they employed *F.R.C.P. 60(a)* as an improper device to file an untimely appeal from the previously-entered Orders. Both the District Court and Third Circuit Court of Appeals rejected this subterfuge.

The Court of Appeals decision is clearly dictated by the applicable rules and is not a departure from the accepted and usual course of judicial proceedings.

> Thus according to the terms of *Rule 77(d)*, failure of the Clerk to send notice of the entry of judgment as required by the rule does not toll the running of the time for appeal under *Rule 4(a)* of the *F.R.A.P*, nor, of itself, require that the Court grant an extension of time under that provision. When in the ordinarily civil case, in which the United States is not a party, 60 days have elasped since the entry of judgment, there can be no appeal despite the fact that the Clerk did not comply with *Rule 77(d)* and

> the party in fact did not learn of the entry of judgment until the 60 days had run. *Moore, Federal Practice, Vol. 7, 77.05. (1973).*

A circumstance similar to that presented here was considered by the Court in *Weedon v. Gaden, 419 F.2d 303 (D.C. Cir. 1969).* In that case, the order sought to be appealed was entered on November 17, 1967. Neither party received a notice of the entry of the order from the clerk. On January 19, 1968, the prospective appellants' attorney discovered that the order had been entered and filed a motion to vacate same. That motion was denied on February 13, 1968 and, on March 18, 1968, a notice of appeal therefrom was filed. The Court held:

> Only one notice of appeal has been filed in this litigation, and that on March 18, 1968, directed to the Court's action on February 13, 1968, and not the order of November 17, 1967. Even if the notice of appeal could nonetheless be deemed to embrace that order -- a dubious proposition, but one we need not consider -- the appeal from that order would be fatally untimely.
>
> Civil appeals between private parties from a District Court to a Court of Appeals must be taken by the filing of a notice of appeal within 30 days from the entry of the judgment appealed from. The time period is jurisdictional; and the scant provision for its enlargement, even had it been invoked here, would not accommodate the instant problems. By any measure, appellant's notice of appeal came too late to bring the order of November 17, 1967, before us for review.
>
> In so concluding, we have not overlooked the fact that appellants' counsel did not receive notice of the entry of that order, and did not find out about it until it was too late to file a timely notice of appeal. That unfortunate circumstance cannot be attributed to appellee, for while, had he known of the order, he might have served a notice of its entry, he was under no compulsion to do so, moreover, appellee's counsel did not get notice either. *Id. at 307.*

The Court concluded that *F.R.C.P. 77(d)* explicitly provided that lack of notice of the entry of the order by the clerk did not affect

the time to appeal and, therefore, the order of the District Court was affirmed. A similar result was reached in *Lathrop v. Oklahoma City Housing Authority, 438 F.2d 914 (10th Cir. 1971), cert. den. 404 U.S. 840 (1971),* wherein the prospective appellants did not learn of an August 15, 1969 order until January 28, 1970. See also, *Mashak v. Hacker, 297 F.2d 495 (7th Cir. 1961); Lord v. Helmandollar, 348 F.2d 780 (D.C. Cir. 1965) cert. den. 383 U.S. 928 (1966).*

Finally, in *Long v. Emery, 383 F.2d 392 (10th Cir. 1967),* the plaintiff had received notice of a hearing of motions to amend and modify a judgment. The plaintiff chose not to attend the hearing and did not receive notice of the order entered as a result thereof until the expiration of 30 days thereafter. The plaintiff then moved for an extension of time to file a notice of appeal under former *Rule 73(a).* The District Court denied the motion and the Court of Appeals, affirming the denial, noted:

> *Rule 77(d),* as amended, thus plainly charges the prospective appellant with the duty of following the progress of the action and advising himself when the court makes the order he wishes to protest. *Id. at 394.*

It is also clear that there never existed a basis for relief under *F.R.C.P. 60(a).* The so-called "clerical mistake" alleged by the Petitioners was the District Court Clerk's claimed failure to forward copies of the entered Orders to the Petitioners. The language of *F.R.C.P. 60(a)* unambiguously refers to clerical mistakes **in** an Order and errors **therein** arising from oversight or omission. Certainly, the Petitioners do not claim that the entered Orders contained errors which require correction.

It is clear that *F.R.C.P. 60(a)* relates primarily to mistakes which do not really attack the party's fundamental right to the judgment at the time it was entered and that said Rule permits, for example, reasonable additions to the record. *United States v. Stuart, 392 F.2d 60, 62 (3rd Cir. 1968).* It is well settled that this Rule applies only to an error of transcription, copying, or calculation, and not to a fundamental failure of discovery or notification. *Bershad v. McDonough, 469 F.2d 1333, 1336 (7th Cir. 1972).* Thus, the Rule has been invoked to add allowable pre-judgment interest to a judgment, to correct the calculation of the amount of a judgment, and to assess costs. See, respectively, *Glick v. White Motor Company,*

458 F.2d 1287 (3rd Cir. 1972); Trujillo v. Longhorn Mfg. Co., Inc., 694 F.2d 221 (10th Cir. 1982); and *Spray-Rite Service Corp. v. Monsanto Co., 684 F.2d 1226 (7th Cir. 1982).* The Rule may not be invoked, however, with respect to errors that affect substantial rights of the parties. *Warner v. City of Bay St. Louis, 526 F.2d 1211 (5th Cir. 1976).*

F.R.C.P. 60(a) has never been invoked to correct an alleged clerical error consisting of the Clerk's failure to give notice of the entry of an Order or Judgment. See *Moore, Federal Practice, Vol. 6A, 60.05-60.08 (1973).* The fact that a Clerk may fail to give notice of the entry of an Order is specifically covered by *F.R.C.P. 77(d)* which has been discussed at length above.

The Third Circuit Court of Appeal's affirmance of the District Court's denial of relief under *F.R.C.P. 60(a)* was, therefore, in accordance with the accepted and usual course of judicial proceedings as traditionally followed by those Courts adhering to the Federal Rules of Civil Procedure.

Since it is clear that *F.R.C.P. 60(a)* does not apply to an alleged failure of the District Court Clerk to give notice of the entries of the July, 1983 Orders and since, in any event and under *F.R.C.P. 77(d),* such a situation would not affect the Petitioners' time to appeal or relieve or authorize a Court to relieve them for failure to appeal within the time allowed, it is quite clear that, as a matter of law, the acts and omissions of the Petitioners themselves have precluded, and now preclude, the consideration of any Order other than that denying their claim for relief under *F.R.C.P. 60(a).* Thus the "Questions Presented" outlined in the Petition which relate to issues other than a claim for relief under *F.R.C.P. 60(a)* were not timely brought on appeal to or considered by the Third Circuit Court of Appeals, are not within the jurisdiction of this Court on a Petition for Writ of Certiorari, and cannot constitute special and important reasons for this Court to grant a Writ of Certiorari; i.e., only Question Three (3) considers, and obliquely at that, the Petitioners' claim for relief under *F.R.C.P. 60(a).*

POINT III

THE PETITIONERS HAVE PRESENTED QUESTIONS NOT PROPERLY RAISED BEFORE THE THIRD CIRCUIT COURT OF APPEALS IN THIS MATTER.

Under Questions Two and Five of the Petition, the Petitioners raise the applicability of certain local rules for the United States District Court for the District of New Jersey. In filing a sixty-five page appellate brief with the Third Circuit Court of Appeals, the Appellants never raised the applicability of any of the said local rules. Their only mention of same was restricted to *local Rule 12(c)* and that was set forth in a brief filed in opposition to a motion to dismiss the appeal. The Petitioners never amended their appellate brief to cite or rely upon any local rules but, rather, improperly attempted to assert same in a brief submitted in reply to the Respondents' brief.

Therefore, any asserted violation of said local rules in Question Two (2) and Five (5) is improper and outside the scope of the issues placed before the Third Circuit Court of Appeals and cannot constitute the grounds for special and important reasons for the grant of a Writ of Certiorari in this matter. It should also be noted, however, that Question Five (5) alleges that opposing counsel violated certain rules of service as set forth in the local rules; yet under the said rule, the prevailing party is required to **submit** (not serve) an Order only upon direction of the Court (Pa 54) and, in this case, no such direction to the prevailing parties was ever made by the Court. It is patently clear, therefore, that, even were this issue properly before this Court, and it is not, it would be determined that opposing counsel did not violate any rule relating to submission of an order and, in any event, the cited rule does not impose an obligation on the part of opposing counsel to serve an executed order.

POINT IV

THE PETITIONERS HAVE NO STANDING TO RAISE QUESTIONS CONCERNING THE DISMISSAL OF THE CROSSCLAIM OF THOMAS E. SUNDSTROM.

In Question Four (4) the Petitioners raise a question concerning the dismissal of the crossclaim of one Thomas E. Sundstrom. The Petitioners obviously have no standing to raise questions concerning such dismissal and Thomas himself did not timely appeal same to the Third Circuit Court of Appeals.

It should be noted, however, that, in the Order of Dismissal (Pa 31), the District Court recited the Petitioners' own filing of an affidavit which averred that Thomas was aware of but chose not to participate in a pre-trial conference and that Thomas had not participated at all in the litigation for a period of almost three years. He had, in fact, moved to Alaska.

Finally, it should also be emphasized that this dismissal was contained in the form of order to which the Petitioners had previously advised the Court that they had no objection.

POINT V

WITH RESPECT TO QUESTION THREE (3) THE PETITIONERS HAVE NOT TIMELY PETITIONED FOR CERTIORARI RELATIVE TO THE CHALLENGED ORDER.

In Question Three (3) the Petitioners allege that the Court of Appeals erred in limiting the present appeal to the Petitioner's claim for relief under *F.R.C.P. 60(a)*. the Court of Appeals rendered that decision on April 19, 1984.

Pursuant to *28 U.S.C. 2101(c)*, any Writ of Certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within 90 days after the entry of such judgment or decree. A Justice of the Supreme Court, for good cause shown, may extend a time for applying for a Writ of Certiorari for a period not exceeding 60 days.

The Petitioners filed their Petition for Certiorari on or about December 1, 1984, approximately 225 days after the entry of the Order to which the Petitioners now ascribe error. As previously set forth, the Court of Appeals decision in this regard was, in any event, clearly correct and in accordance with the accepted and usual course of judicial proceedings; however, the Petitioners are untimely in now seeking a Writ of Certiorari relative to same.

CONCLUSION

From the foregoing, it is quite clear that this cause should not be reviewed by the United States Supreme Court. Despite the transparently meritless attempt by the Petitioners to raise a constitutional issue relating to a right of trial by jury, it is obvious that the complaint was dismissed due to their own continuous disregard of prescribed Court rules and procedures. The fact that their complaint demanded a trial by jury is merely incidental to that plain fact.

The Respondents have had great difficulty in responding to the Petition because it has not presented with accuracy, brevity and clearness those points which are essential to a ready and adequate understanding of the points requiring consideration. Therefore, the Petition should be denied for that reason pursuant to *Rule 21.5.*

Finally, the Petitioners have clearly presented a false and misleading statement of the case, as heretofore discussed and have continued to maliciously prosecute a baseless action against these Respondents who respectfully request that the Court deny the Petition for Certiorari and allow costs to the Respondents.

Respectfully submitted,

s/J.J.M.
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